

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHICKIE'S AND PETE'S, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
INTER CITY LEASING CO.;	:	
MAIL CONTRACTORS OF AMERICA;	:	
JOHN DOE; UNITED STATES POSTAL	:	
SERVICE; PECO ENERGY CO.	:	NO. 01-4890

MEMORANDUM ORDER

Plaintiff, the owner of a restaurant known as Chickie's & Pete's Café, initiated this action in the Philadelphia Court of Common Pleas, asserting a claim of negligence against the defendants arising from a motor vehicle accident. Plaintiff alleges that a vehicle operated by defendant John Doe jumped a street curb and struck a power generator at the rear of plaintiff's restaurant causing damage to plaintiff's property and an interruption of business for almost nine hours. Plaintiff claims damages in the amount of \$68,459.26.

Defendant United States Postal Service ("USPS") timely removed the action to this court where it has filed a motion to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

As a sovereign, the United States is immune from suit except on such terms to which it consents. The terms of its consent to be sued define the court's jurisdiction to entertain a suit. See U.S. v. Sherwood, 312 U.S. 584, 586 (1941). The

Federal Tort Claims Act ("FTCA") is the exclusive waiver of sovereign immunity for actions sounding in tort against the United States, its agencies and officers acting within their official capacity. See Hager v. Swanson Group, Inc., 916 F. Supp. 447, 448 (E.D. Pa. 1996).

The Act allows suits against the United States for torts committed by its employees within the scope of their employment. See 28 U.S.C. § 1346(b). The presentation of a claim to the appropriate federal agency, however, is a prerequisite to suit under the Act. See 28 U.S.C. § 2675(a). Compliance with this procedure is jurisdictional and cannot be waived. See Livera v. First National State Bank of New Jersey, 879 F.2d 1186, 1194 (3d Cir. 1989); Jones v. U.S., 195 F. Supp. 2d 591 (D. Del. 2002); McDevitt v. U.S. Postal Service, 963 F. Supp. 482, 484 (E.D. Pa. 1997); Dreakward v. Chestnut Hill Hospital, 427 F. Supp. 177, 179 (E.D. Pa. 1977) (filing of proper administrative claim is an "absolute and unwaivable jurisdictional prerequisite to filing and maintaining an action under 28 U.S.C. § 2675(a)").

The USPS submitted affidavits to show that no administrative claim was ever filed by plaintiff with respect to the claim in this action which plaintiff has not disputed. The court does not have subject matter jurisdiction to entertain plaintiff's claim against the USPS.

There is no basis of subject matter jurisdiction over any of plaintiff's remaining claims. It is clear from the face of the complaint that there is no federal question or complete diversity of citizenship between the parties. The amount in controversy in any event is less than \$75,000.

In these circumstances, the court lacks jurisdiction to proceed and the case must be remanded. See Galligan v. City of Philadelphia, 156 F. Supp. 2d 467, 474 (E.D. Pa. 2001); Aldridge v. Hartford Hospital, 969 F. Supp. 816, 822 (D. Conn. 1996).

ACCORDINGLY, this day of August, 2002, upon consideration of defendant United States Postal Service's Motion to Dismiss (Doc. #12) and in the absence of any response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and the claim against the United States Postal Service is **DISMISSED**. **IT IS FURTHER ORDERED** that the above action is **REMANDED** to the Court of Common Pleas of Philadelphia pursuant to 28 U.S.C. § 1447(c).

BY THE COURT:

JAY C. WALDMAN, J.